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CONSIDERATION OF THE ADDITIONAL INTERNATIONAL LEGAL INSTRUMENTS AGAINST TRAFFICKING IN WOMEN AND CHILDREN

Draft elements for an agreement on the prevention, suppression and punishment of international trafficking in women and children, supplementary to the Convention against Transnational Organized Crime: submitted by Argentina

Preamble

The States Parties to this Agreement,

Considering the need to supplement the provisions of the Convention against Transnational Organized Crime by the adoption of an agreement that deals in particular with international trafficking in women and children,

Aware that international trafficking in women and children constitutes a universal concern,

Bearing in mind that these two categories of person are more vulnerable than men to the risk of being victims of certain types of illicit acts,

Bearing in mind also that, while there is a wide variety of international legal instruments containing provisions aimed at combating sexual exploitation of women and children, in particular the Convention on the Rights of the Child[1] and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of

*A/AC.254/1.
[1]Resolution 44/25, annex.

the Prostitution of Others,[2] there is no such instrument whose specific objective is to deal with the problem of international trafficking in children for any purpose or of trafficking in both categories of person by criminal organizations,

Convinced of the need to establish an agreement for the prevention, suppression and punishment of these forms of illegal conduct,

Reaffirming the importance of international cooperation in the effective prevention and suppression of unlawful acts of this kind,

Adopt the following Protocol:

Article 1

Objective

1. The objective of this Protocol is the prevention, suppression and punishment of international trafficking in women and children.

2. To that end, States Parties undertake:

(a) To adopt effective measures, in conformity with their domestic law, for preventing and severely punishing members of criminal organizations whose aims include international trafficking in women or children, as defined in this Agreement;

(b) To ensure the protection of women and children, in accordance with their best interests;

(c) To adopt relevant penal and administrative provisions for the purpose of preventing, suppressing and punishing international trafficking in women and children;

(d) To establish a system of judicial cooperation between States Parties that will facilitate the prosecution of unlawful acts connected with international trafficking in women and children;

(e) To ensure the prompt return of children or women victims of trafficking to their country of habitual residence;

(f) To prevent any type of penalty being imposed on women or children victims of international trafficking;

(g) To progressively abolish those practices which allow husbands, families or clans to order the transfer of a woman to another person for payment or otherwise for the benefit of an international criminal organization;

(h) To devote all means to guaranteeing victims appropriate legal, medical, psychological and financial assistance whenever States Parties deem it necessary.

[2] Resolution 317 (IV), annex.

Article 2

Scope of application

The provisions of this Agreement shall apply to any child or woman who is, or habitually resides, in a State Party at the time of commission of an act of international trafficking of which that person is a victim.

Article 3

Definitions

For the purposes of this Agreement:

(a) "Child" shall mean any person under the age of 18 years;

(b) "International trafficking in children" shall mean any act carried out or to be carried out for an illicit purpose or aim, in a country other than that of the habitual residence of the child, by a criminal organization, jointly or through any of its members, that involves:

(i) Promoting, facilitating or arranging the abduction, holding or concealment of a child, with or without his or her consent, whether or not for profit, and whether occasionally or repeatedly; or

(ii) Offering, handing over or receiving a child in exchange for money or any other consideration in kind, or acting as an intermediary in any such acts;

(c) "International trafficking in women" shall mean any act carried out or to be carried out for an illicit purpose or aim by any individual or corporate entity in an organized manner, whether or not on behalf of another, whether or not for profit and whether occasionally or repeatedly, that involves:

(i) Promoting, facilitating, arranging, inciting or participating in the abduction, holding or concealment of a woman, with or without her consent, for illicit purposes or in order to force her to perform, not perform or tolerate an act or to subject her unlawfully to the power of another person;

(ii) Transporting a woman to or facilitating her entry into another State;

(d) "Illicit purpose or aim" shall mean:

(i) Reduction to slavery, servitude or other similar condition;

(ii) Maintenance of the victim in such conditions in order to demand, under the threat of some penalty, the performance of forced and compulsory labour to which the victim has not voluntarily consented or in order to force the person, in accordance with custom or by agreement, for payment or free of charge, to provide certain services without the freedom to change his or her condition;

(iii) The prostitution or other form of sexual exploitation of a woman or child, even with the consent of that person;

(iv) Any means of production, distribution or importation, in their present or future forms, of graphic or audiovisual materials focused on the sexual conduct of women or children or on the genitals of such persons;

(v) The organization, promotion or use of tourism-related activities or journeys involving the sexual exploitation of women;

(vi) Facilitating, promoting or acting as an intermediary in acts aimed at rendering uncertain, changing or annulling the marital status of a woman, in any manner or by any means, whether or not for payment or for the promise thereof, whether or not in accordance with a traditional or customary practice and with or without the use of threats or abuse of authority;

(vii) Extraction of body organs or organic tissue.

Article 4

Classification of offences

States Parties shall undertake to classify as a criminal offence trafficking in women and children as defined in this Agreement. Attempts and participation in any aspects of the offence (complicity or instigation) shall be punishable. States Parties shall also undertake to establish penalties for such offences in accordance with their gravity.

Article 5

Seizure and confiscation of gains

States Parties shall take all necessary and appropriate measures to allow the seizure and confiscation of gains obtained by the criminal organization from the offences described in article 3 of this Protocol. The proceeds from such seizure and confiscation shall be allocated towards defraying the costs of providing due assistance to the victim, where deemed appropriate by States Parties and as agreed by them, in conformity with individual guarantees enshrined in domestic legislation.

Article 6

Special aspects of international cooperation

States Parties shall cooperate with non-States parties in the prevention, suppression and punishment of illicit international trafficking in women and children and in the protection and care of women and children victims of such unlawful acts. Accordingly, the competent authorities of States Parties shall be required to notify the competent authorities of a non-State party of cases where, on their territory, there is a child or woman who is a national of that non-State party and who has been a victim of trafficking in a State Party. States Parties shall inform the Secretary-General of the United Nations of the existence of non-governmental organizations devoted to the prevention of the offences covered by this Agreement, so that a database may be established for the purpose of permitting information exchange among these organizations and States.

Article 7

Information and education

States Parties shall:

(a) Endeavour to undertake, including through non-governmental organizations, information campaigns and programmes to generate public awareness of the gravity of offences relating to international trafficking in women and children, such programmes to include information on potential victims, causes and consequences of trafficking, penalties for unlawful acts and the risks that such offences represent to the life and health of the victims;

(b) Establish methods for systematic gathering of data and promotion of research to determine the modus operandi of international trafficking in women and children;

(c) Encourage, within the private sector, the setting up of professional associations, foundations, non-governmental organizations and research institutes concerned with the problem of international trafficking in women and children;

(d) Promote the establishment of programmes of victim assistance that provide, *inter alia*, for temporary housing, psychological, medical and legal support and the safe return of the victims to their country of origin in cases where not arranged by that country;

(e) Distribute information relating to the different forms of international trafficking in women and children and undertake programmed actions to combat such trafficking.

Article 8

Confidentiality of proceedings

States Parties shall safeguard the interests of victims of international trafficking in women and children and take steps to ensure that the conduct of any proceedings instituted under this Agreement remain confidential at all times.